



PLANNING COMMISSION

Department of Urban Planning & Design • P.O. Box 27210 • Tucson, AZ 85726-7210

DATE: June 7, 2006

TO: Planning Commission

FROM: *for* Albert F. Elias, Executive Secretary *J. Maggiorini*

SUBJECT: Planning Commission Law and Procedures

The City's Planning Commission is appointed by the Mayor and Council to carry out the functions and duties provided by both state law and the Land Use Code (LUC). This memorandum addresses the legal structure for the land use regulation and the basic procedures for planning and zoning under the LUC.

Legal structure of land use regulation.

Arizona Revised Statutes provide the state law authority for local jurisdictions to engage in land use regulation. There are separate state laws regulating county land use (Title 11) and municipal land use (Title 9) and there are a number of significant differences in the authority and language applied to each one. State law governing municipal land use is divided into two basic categories: Title 9, Article 6, (the A.R.S. §9-461 sections) which addresses the planning authority and Title 9, Article 6.1, zoning authority (the A.R.S. §9-462 sections). The fundamental distinction between these two is that planning provides authority for establishing land use policies while zoning provides the authority to regulate the specific development on private property.

The planning authority includes two types of plans. The general plan is the overall land use plan for the local community. State law provides for basic elements for all municipal plans which include land use, open space, growth areas, environmental planning, cost of development and water resources, and elements for larger communities which include a conservation, recreation, circulation, public services, public buildings, housing, redevelopment and safety elements. A.R.S. §9-461.05, LUC Sec. 5.2.2.

The second type of plan is the specific plan, which is a subsidiary of the general plan and adopted to implement the general plan. A.R.S. §9-461.08, LUC Sec. 5.2.3. Tucson uses this authority to adopt plans for geographical areas in the City, including sub-regional plans, area plans and neighborhood plans. These plans provide more precise and detailed policy direction for smaller areas within the city.

The plans adopted under the planning authority only establish policies and guidelines and do not directly regulate development except where there is discretionary authority such as

a rezoning or special exception. In those situations, the discretionary approval must conform to the adopted plans. Courts have generally provided broad latitude to the local determination of whether there is compliance between the zoning and the adopted plans, even where the adopted zoning is contrary to express statements in the plan. The City of Tucson has historically strictly construed the requirement for zoning compliance with plans and has required plan amendments where the proposed zoning change would be contrary to express statements in the plan.

State law authorizes the establishment of a planning commission and a planning department to carry out the local planning function. A.R.S. §§9-461.01, 9-461.02 and 9-461.03. The LUC implements that authority and establishes the Department of Urban Planning and Design, LUC Sec. 5.1.4, and the Planning Commission, LUC Sec. 5.1.5. The distinct zoning authority under Article 6.1 is implemented through the establishment of a Zoning Examiner, who holds public hearings on behalf of Mayor and Council, LUC Sec. 5.1.6; a Zoning Administrator, who interprets and applies zoning regulations, LUC Sec. 5.1.11.1; and a Board of Adjustment that hears zoning variances and appeals, LUC Sec. 5.1.7.

The LUC recognizes the overall authority of the Mayor and Council to adopt and enforce plans and zoning regulations. LUC Sec. 5.1.2. The LUC assigns to the City Manager the responsibility for “general supervision of, and direction to, the Department of Urban Planning and Design and the Development Services Department (DSD) in the administration of the *Land Use Code (LUC)*, subject to the control of the Mayor and Council . . .” LUC Sec. 5.1.3.

The Department of Urban Planning and Design (DUPD) is assigned the function of the “Planning Agency” as provided in §9-461.01. Under state law, the planning agency shall “(1) develop and maintain a general plan; (2) develop such specific plans as may be necessary to implement the general plan; (3) periodically review the capital improvement program of the municipality; (4) perform such other planning functions as the legislative body may provide.” The LUC mirrors these functions and establishes DUPD as the administrative body that “shall be responsible for the preparation, maintenance, and administration of the *General Plan* and specific plans, the preparation and maintenance of land use regulations, redevelopment plans, and other functions deemed necessary or desirable for the city.” LUC Sec. 5.1.4.2

The Planning Commission is established to “advise the Mayor and Council and the Department of Urban Planning and Design . . .” LUC Sec. 5.1.5. The powers and duties of the Planning Commission include conducting public hearings and making recommendations on the General Plan, specific plans and LUC amendments and other matters. LUC Sec. 5.1.5.3. Other matters includes review of “such other issues as may be required by the Mayor and Council, and upon agreement by seven (7) members, the Planning Commission may consider any other matter that pertains or is reasonably related to its duties as described above.” LUC Sec. 5.1.5.5.3.D.

This legal structure establishes the DUPD as the administrative body that performs the work of initiating, preparing, developing, writing and obtaining public review and comment

for land use regulations. This work obviously involves establishing priorities for the use of limited city resources. The control over the allocation of those resources lies with the department under the supervision of the City Manager who is in turn subject to the direction of the Mayor and Council.

In this context, the Planning Commission can not take independent action that requires any further action. The Commission cannot direct city staff to prepare amendments nor direct the Mayor and Council to initiate, consider or adopt any action. DUPD has, however, historically responded to requests from the Planning Commission to explore areas for future amendments to the extent permitted by staff resources and priorities. Obviously the Mayor and Council may, as the ultimate authority of the City, initiate a new amendment and direct the City Manager to perform the administrative duties necessary to implement their action.

Planning and Zoning Procedures in the LUC.

Planning and zoning procedures are provided in Article V, Administration, of the LUC and in the Development Compliance Code, Chapter 23A of the Tucson Code. The LUC establishes the two basic legislative procedures for the adoption or amendment of plans and the LUC and for the change of zoning classifications (rezonings). The procedures governing how the LUC is administered and applied is in the Development Compliance Code.

This separation is the result of the streamlining of the LUC procedures adopted by the Mayor and Council in 2004. Prior to that, the LUC contained procedures designated by numbers, such as a Type V legislative procedure. In all, there were 9 distinct legislative procedures, 11 separate administrative procedures, 6 different appeal procedures, a separate section on the components of procedures which were in addition to the 9 administrative procedures and 2 appeal procedures in the Development Compliance Code. This plethora of procedures was difficult for staff and professionals to keep straight and almost impossible to understand to someone not familiar with the LUC. Many of the procedures were similar except for minor differences in specific details and there was no coherent pattern to the different procedures.

The revision of the procedures streamlined the number and requirements for the procedures and divided them into easily identified categories. All administrative and appeal procedures were moved from the LUC to the Development Compliance Code. This created a clear delineation between legislative actions by Mayor and Council, by adoption of either a resolution or ordinance as provided in the LUC, and administrative procedures, now in the Development Compliance Code. Since appeals only arise from administrative matters, those are likewise in the Development Compliance Code.

The legislative procedures in the LUC were divided into the two fundamental categories of (1) policies and city-wide codes and (2) individual property regulations. These procedures are now named according to the body which performs the review prior to approval. Thus the LUC provides a section on general legislative procedural requirements and then the process for the Planning Commission Legislative Procedure and the Zoning

Examiner Legislative Procedure. The Planning Commission Legislative Procedure applies to policies such as the general and specific plans and the LUC amendments. The Zoning Examiner Legislative Procedure applies to all changes to the zoning classification and regulations on individual properties.

The administrative procedures in Article II of the Development Compliance Code are initially separated into those that involve only staff review for zoning compliance and those that involve an additional public process. The staff review procedures are in Division 1 and include Zoning Compliance Review, Sec. 23A-31, Administrative design review, Sec. 23A-32, subdivisions, Sec. 23A-33, development plan approval, Sec. 23A-34, and Residential Cluster Project, Sec. 23A-35. The Administrative design review process includes a minor review, full review and major review process. Although there are also provisions for review by advisory boards such as the DRB, STAC and local historic advisory boards, all of these procedures essentially involve staff application of the applicable regulations.

The special zoning review involves some form of public participation and is separated into the Limited Notice Procedure in Division 2 and the Full Notice Procedure in Division 3. The Limited Notice Procedure provides notice to a limited area of fifty (50) feet from the site and the neighborhood association that includes the site and is applied to those development applications that include discretionary approval. These procedures are applied where the issue subject to approval may effect the adjacent properties but is sufficiently minor or localized in effect that it does not require greater notice.

The Full Notice Procedure in Division 2 expands notice to three hundred (300) feet from the site and neighborhood associations within one mile. The general rules for this procedure are in Sec. 23A-50. This notice area is applied to three distinct types of discretionary approvals. Sec. 23A-51 is the DSD full notice procedure. This procedure provides for public notice and comment prior to a decision by the DSD Director. This includes applications in the overlay zones such as HDZ, ERZ and the WASH applications. Sec. 23A-52 is the Board of Adjustment procedure. This applies to variances and other matters that must be approved by the Board of Adjustment after notice and a public hearing. Sec. 23A-53 is the Zoning Examiner Procedure that applies to special exception approvals and other matters decided by the Zoning Examiner after public notice and a public hearing.

Appeals from administrative actions are in Division 4. There are two basic forums for appeal, Sec. 23A-61 which establishes the procedure for appeals to the Board of Adjustment and Sec. 23A-62, which establishes the procedure for appeals to the Mayor and Council. There is also a separate procedure as required by state law to provide for an appeal of a claim that a final City decision has unconstitutionally "taken" an individual's property. Sec. 23A-63.

The consolidation of the prior procedures could not resolve all of the anomalies in land use law. In particular, there are two matters, final plats and certain applications for demolition of historic structures, which are approved by Mayor and Council but are not subject to the legislative discretion that characterizes the LUC procedures and are not appeals

from prior administrative decisions. Instead these are administrative applications that are directly decided by the Mayor and Council, which doesn't fit within the other categories.

A chart with the basic city land use procedures is attached.

Attachments: Chart of basic city land use procedures